

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11432 by Thomas J. Buchanan to appropriate Water from Le Montaine Creek Tributary to Mojave Drainage Area in Los Angeles County for Domestic Purposes.

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Decision A. 11432 D. 617

Decided Sept. 16, 1949

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In attendance at investigation conducted by the Division of Water Resources at the site of the proposed appropriation on May 5, 1948:

For the Applicant

Thomas J. Buchanan

Ray C. Eberhard, Attorney
Elizabeth Eberhard Ziegler, Attorney
W. P. Rowe, Engineer

For the Protestants

Martin Knauff and
John C. Buttner, Sr.

A. P. Nichols, Mr. Hickson and
R. G. Lamb, Attorneys

For the State Engineer

J. J. Heacock
Associate Hydraulic Engineer
Division of Water Resources
Department of Public Works

Also present during the investigation were Mr. Robert Buchanan, an interested party, and a Mr. Larimore and a Mrs. Smith, witnesses.

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O P I N I O N

General Description of the Project

The application contemplates a diversion of 1.0 cubic foot per second year-round from Le Montaine Creek which is tributary to the Mojave Drainage Area in Los Angeles County. The proposed point of diversion lies within the NE $\frac{1}{4}$ SE $\frac{1}{4}$

of Section 26, T 4 N, R 8 W, S.B.B. & M. Diversion is to be effected by means of an 8 foot concrete manhole trap emplaced in the stream channel. The conduit is to be a concrete and steel gravity pipe line 6 inches in diameter and 5 miles long. The water is to be utilized for domestic purposes. The place of use is to include the $E\frac{1}{2}$ of Section 1, the $N\frac{1}{2}$ $NE\frac{1}{4}$ of Section 2 and 260 acres in the $W\frac{1}{2}$ of Section 12, T 4 N, R 8 W, S.B.B. & M. It is to be subdivided into 607 one-acre lots, 95% of which are expected to be residential and the remainder business. It is supposed that gardens will average $1/2$ acre per lot.

Protest

Martin Knauff of Long Beach and John C. Buttner, Sr. of Llano jointly protest the application. They represent that the proposed appropriation will seriously diminish the water supply from which for 50 years their lands in Sections 24 and 25, T 4 N, R 8 W, S.B.B. & M. have been supplied. They claim to own more than 700 acres, a considerable portion of which has been cultivated, and that water has been used both for domestic purposes and for irrigation. They base their claim of a water right upon an appropriation of all of the water from springs feeding Le Montaine Creek within the $NE\frac{1}{4}$ $SE\frac{1}{4}$ of Section 26 of the township mentioned, the water in question having been used under that appropriation for more than 50 years. They assert that their point of diversion lies within the $NE\frac{1}{4}$ $SE\frac{1}{4}$ of the said Section 26, that water first enters a 12 inch pipe line 200 feet long heading in the creek channel and is conducted thence through a 4 inch pipe, reducing further on to diameter of $2\frac{1}{2}$ inches, the total length of pipe line approaching 6000 feet. They state in effect that their protest may be disregarded and dismissed if their alleged prior right to take and use from their present source of supply an amount adequate for domestic and irrigation purposes on the 700 acre tract in question is conceded.

The applicant answers the protest by stating in effect that whereas the protestants claim all the water from the Le Montaine stream system for use on over 700 acres, the watershed actually is undeveloped, that irrigation on the protestants' lands has declined from 40 acres to approximately 10 acres, the latter figure representing the present extent of irrigation, the remainder of the 700 acres being undeveloped.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation on May 5, 1948, by an engineer of the Division. The applicant and the protestants were present or represented during the investigation.

Records Relied Upon

Application 11432 and all data and information on file therewith.

Discussion

Data upon which to base an estimate of the probable annual water crop of Le Montaine Creek are almost entirely lacking. Photographs of the stream channel in the locality of the proposed point of diversion, during the field investigation, suggest that the flow of Le Montaine Creek at times is considerable. That is attested by the size of the channel and by the accumulation therein of driftwood and other debris. However according to the same photographs the stream channel at the time of the investigation was dry or nearly dry, and the measured flow on September 12, 1947, according to a statement attributed to Applicant's Engineer W.P.Rowe, was but 3.3 Southern California miners inches. Engineer Rowe is said to have estimated that at least 0.10 cubic foot per second

can be developed by clearing spring areas and intercepting side accretions. These meager data indicate that the dependable summer flow of Le Montaine is but a small fraction of the 1 cubic foot per second applied for.

As to the protestants' use of water, Investigating Engineer Heacock reports that on May 5, 1948 there were 3 fully plumbed houses, that the population on the place averages 10 persons, that there were 16 acres of mixed deciduous orchard in poor condition and approximately 3 acres of garden, all of the foregoing being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T 4 N, R 8 W. The only information as to the amount of water diverted to this development of the protestants is a statement by Engineer Rowe that 1.6 Southern California miners inches were so diverted on September 12, 1947. Inspecting Engineer Heacock describes the protestants' conduit as 3 inch tubing (about 2 $\frac{1}{2}$ inch I.D.), 3500 feet long with a total fall of approximately 325 feet. The capacity of such a conduit may be supposed to be of the order of 96 gallons per minute or about 11 Southern California miners inches. Irrigation of the 19 acres of the protestants' orchard and garden plus limited domestic use might justify (if right thereto exists) a diversion of about the same amount.

The project contemplated under Application 11432 is for the purpose of securing a domestic supply for a considerable number of users. Even though the protestants may successfully assert a right to a part, if not all, of the summer flow the utilization of such surplus as does occur may be extremely valuable to the applicant and to the prospective users whom he aspires to serve. The applicant may be presumed to be well aware of the necessity of supplementing the supply afforded by Le Montaine Creek by supplies secured elsewhere and forbearing to divert from that stream when the flow therein is required for the satisfaction

of prior rights. Should the application be approved the protestants' rights will be safeguarded by the phraseology of every permit to the effect that the permit is issued subject to vested rights.

Summary and Conclusions

There are at times unappropriated waters in the source from which the applicant proposes to divert. Such surpluses while indefinite as to both amount and time of occurrence may be taken and used beneficially by the applicant without injury to the protestants. The application should be approved, subject to the usual terms and conditions.

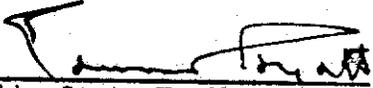
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ORDER

Application 11432 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11432 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 16th day of September, 1949.


Edward Hyatt, State Engineer

